
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

AUBREY DAY, an individual, v. GENESCO, INC., a corporation,	Plaintiff, Defendant.	MEMORANDUM DECISION AND ORDER DENYING MOTION TO STRIKE DEFENDANT'S NOTICE OF INTENT TO ALLOCATE FAULT Case No. 2:12-cv-404 RJS District Judge Robert J. Shelby Magistrate Judge Brooke Wells
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Before the Court is Plaintiff's Motion to Strike Defendant's Notice of Intent to Allocate Fault.¹ The Amended Scheduling Order in this case explicitly provides a deadline for the allocation of fault. That deadline is June 28, 2013.² Defendant filed a notice of intent to allocate fault to non-parties on June 26, 2013. This filing was therefore within the time frame set forth by the Court.

Plaintiff argues this notice was untimely in violation of Local Rule 9-1 because the notice was not filed within a reasonable time after Defendant discovered the factual and legal basis to allocate fault. The Court disagrees. Utah Code § 78B-5-821(4) provides in relevant part:

Fault may not be allocated to a non-party unless a party timely files a description of the factual and legal basis on which fault can be allocated and information identifying the non-party, to the extent known or reasonably available to the party, including name, address, telephone number and employer. The party shall file the description and identifying information in accordance with Rule 9, Utah Rules of Civil Procedure or as ordered by the court but in no event later than 90 days before trial as provided in Rule 9, Utah Rules of Civil Procedure.³

¹ Docket no. 27.

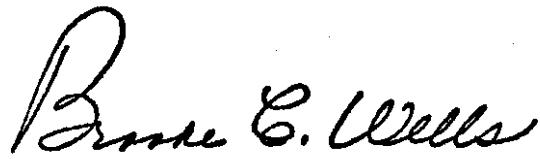
² Amended Scheduling Order p. 2, docket no. 25.

³ Utah Code Ann. § 78B-5-821 (emphasis added).

Defendant's notice was filed within the time frame allowed by the Court under the Amended Scheduling order. As such it complies with Utah's substantive law on comparative negligence.

Plaintiff's motion is therefore DENIED.⁴

DATED this 26 July 2013.

A handwritten signature in black ink, appearing to read "Brooke C. Wells".

Brooke C. Wells
United States Magistrate Judge

⁴ In opposition Genesco states that it was surprised at this motion and “believed—or at least hoped—that disagreements in this case to date are ‘simply’ a result of miscommunication and bad circumstances, which can be rectified moving forward.” Op. p. iii. The Court encourages the parties to use their best efforts to communicate and cooperate, which will hopefully alleviate the filing of motions that are not supported by the record.